

	OAH 7-1902-17198-2
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter came on for a prehearing conference before Administrative Law Judge Richard C. Luis on May 15, 2006, at the Office of Administrative Hearings in Minneapolis.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by or on behalf of Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction (Respondent), 1112 East 14th Street, Glencoe, MN 55336. The OAH record closed on May 15, 2006.

STATEMENT OF THE ISSUES

1. Whether Respondent failed to complete work on a contract in violation of Minn. Stat. § 326.91, subd. 1(4).¹
2. Whether Respondent diverted a down payment from its intended purpose in violation of Minn. Stat. §§ 45.027, subds. 1a, 2, and 7(a)(4), 326.91, subd. 1(6) and Minn. R. 2891.0050, subp. 1C.
3. Whether Respondent failed to respond to the Department's requests for information in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3).
4. Whether it is appropriate to take disciplinary action against the residential building contractor license held by Respondent.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

¹ Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition, and all references to Minnesota Rules are to the 2005 edition.

FINDINGS OF FACT

1. On October 15, 2001, the Department issued Respondent a residential building contractor's license.

2. On April 3, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of Hearing) in this matter was mailed to Kraig David Terlinden by first class mail to the following address: 1112 East 14th Street, Glencoe, MN 55336.² The Notice of Hearing indicated that a Prehearing Conference would be held in this matter on May 15, 2006.³

3. The Notice of Hearing in this matter includes the following statement:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.⁴

4. No one appeared at the May 15, 2006, prehearing conference on behalf of Respondent. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Respondent.

5. The Notice of Hearing alleges that Respondent failed to complete work in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4) and alleges that Respondent diverted a \$10,467 down payment from its intended purpose, demonstrating that Respondent is incompetent, untrustworthy, or financially irresponsible within the meaning of Minn. Stat. §§ 45.027, subds. 1a, 2, and 7(a)(4), 326.91, subd. 1(6) and Minn. R. 2891.0050, subp. 1C. The Notice also alleges that Respondent failed to respond to requests for information relating to the first complaint sent by the Department on December 8, 2005 and February 16, 2006 in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3).

6. The allegations contained in the Notice of Hearing are deemed proven and are incorporated into these Findings by reference.

7. The taking of disciplinary action against Respondent is in the public interest.

² See Affidavit of Service by First Class Mail of Susan M. Oesterreich dated April 3, 2006.

³ Notice of Hearing, p. 1.

⁴ Notice of Hearing, p. 4, ¶ 1.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subds. 6 and 7, and 326.91.

2. Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.

3. Under Minn. Rule 1400.6000, Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction is in default as a result of his failure to appear at the scheduled Prehearing Conference.

4. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice may be taken as true or deemed proven when a party defaults.

5. Based on the facts set out in the Notice of Hearing, Respondent failed to complete work in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4). Respondent diverted a \$10,467 down payment from its intended purpose, demonstrating that Respondent is incompetent, untrustworthy, or financially irresponsible within the meaning of Minn. Stat. §§ 45.027, subds. 1a, 2, and 7(a)(4), 326.91, subd. 1(6) and Minn. R. 2891.0050, subp. 1C. Respondent failed to respond to requests for information relating to the first complaint sent by the Department on December 8, 2005 and February 16, 2006 in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3).

6. Disciplinary action against the residential building contractor's license of Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the residential building contractor's license of Kraig David Terlinden, individually, and d/b/a Kraig Terlinden Construction.

Dated: June 2, 2006

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped, One tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651)284-5492, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.